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12 NATIONWIDE MUTUAL INSURANCE CO.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION

MARCELLE LUCERO,
Plaintiff,
v.
NATIONWIDE MUTUAL
INSURANCE CO.; and DOES 1 to 10,
Defendants.

Case No. 2:23-cv-2804

**DEFENDANT'S NOTICE TO
FEDERAL COURT OF
REMOVAL**

[28 U.S.C. §§ 1332, 1441, 1446]

**Complaint Filed:
Orange County Superior Court**

DEFENDANT'S NOTICE TO FEDERAL
COURT OF REMOVAL

1 **TO THE UNITED STATES DISTRICT COURT FOR THE CENTRAL
2 DISTRICT OF CALIFORNIA, SOUTHERN DIVISION, AND ALL PARTIES
3 OF RECORD:**

4 PLEASE TAKE NOTICE that Defendant NATIONWIDE MUTUAL
5 INSURANCE CO. (“Defendant”) hereby removes the above-entitled action to this
6 Court from the Superior Court of the State of California for the County of Orange,
7 pursuant to 28 U.S.C. §§ 1332, 1441, and 1446.

8 **I. JURISDICTION AND VENUE ARE PROPER**

9 1. This Court has original jurisdiction over this matter based on diversity
10 of citizenship pursuant to 28 U.S.C. § 1332(a). Defendant may remove this matter
11 to this Court pursuant to 28 U.S.C. § 1441(b) because it is a civil action between
12 citizens of different states, and the amount in controversy exceeds \$75,000, exclusive
13 of interest and costs, as set forth below. 28 U.S.C. §§ 1332, 1441(a), 1446(b).

14 2. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1391, 1446.

15 **II. STATUS OF THE PLEADINGS**

16 3. This lawsuit arises out of Plaintiff Marcelle Lucero’s (“Plaintiff”) prior
17 employment with Defendant. On March 8, 2023, Plaintiff commenced this action by
18 filing a complaint in the Superior Court of California, County of Orange entitled
19 *Marcelle Lucero v. Nationwide Mutual Insurance Co., et al.*, designated as Case No.
20 30-2023-01312329-CU-WT-CJC (“Complaint”). (Declaration of Tanja L. Darrow
21 in Support of Defendant’s Notice to Federal Court of Removal (“Darrow Decl.”) ¶ 2,
22 Exhibit (“Exh.”) A, Complaint). The Complaint alleges six causes of action: (1)
23 Wrongful Termination in Violation of Public Policy (Cal. Gov. Code § 12940(a)); (2)
24 Disability Discrimination (Cal. Gov. Code § 12940 *et seq.*); (3) Retaliation (Cal. Gov.
25 Code § 12940(h)); (4) Failure to Take Reasonable Steps to Prevent Discrimination
26 (Cal. Gov. Code § 12940(k)); (5) Failure to Provide Reasonable Accommodation
27 (Cal. Gov. Code § 12940(k)); and (6) Failure to Engage in the Interactive Process
28 (Cal. Gov. Code § 12940(n). (*Id.*).

1 4. On March 17, 2023, Plaintiff served Defendant's agent for service of
2 process with Plaintiff's Complaint and Summons Packet. (Darrow Decl. ¶ 4).

3 5. On April 12, 2023, Defendant filed its Answer to Plaintiff's unverified
4 Complaint in the Superior Court of the County of Orange. (Darrow Decl. ¶ 5, Exh.
5 B).

6 6. To Defendant's knowledge, the documents attached to the Declaration
7 of Tanja L. Darrow constitute all process, pleadings, and orders served upon
8 Defendant or filed in the State Court action by Defendant.

9 **III. TIMELINESS OF REMOVAL AND NOTICE**

10 7. This Notice of Removal is timely in that it has been filed within thirty
11 (30) days of service upon Defendant of the Summons and Complaint on March 17,
12 2023, and within one year of the filing of the Complaint on March 8, 2023. *See* 28
13 U.S.C. § 1446(b).

14 8. On April 14, 2023, or shortly thereafter, Defendant will file with the
15 Orange County Superior Court and serve Plaintiff's counsel, The Sweeney Law Firm,
16 located at 15303 Ventura Blvd., Suite 900, Sherman Oaks, CA 91403 and The Law
17 Offices of Jonathan J. Moon, located at 18000 Studebaker Rd., Suite 700, Cerritos,
18 CA 90703, with a copy of the Notice to State Court and Adverse Parties of Removal
19 of Civil Action to Federal Court. (Darrow Decl. ¶ 7, Exh. C).

20 **IV. COMPLETE DIVERSITY OF CITIZENSHIP EXISTS**

21 9. The Court has jurisdiction over this action because complete diversity
22 of citizenship between citizens of different states exists and the matter in controversy
23 exceeds the sum of \$75,000, exclusive of interests and costs. 28 U.S.C. § 1332(a).

24 10. For purposes of removal, the citizenship of doe defendants is
25 disregarded and only named defendants are considered. 28 U.S.C. § 1441(b)(1); *see*
26 *Newcombe v. Adolf Coors Co.*, 157 F.3d 686 (9th Cir. 1998). Therefore, the
27 defendants designated as DOES 1 through 10 are fictitious defendants, are not parties

1 to this action, have not been served, and are to be disregarded for purposes of this
2 removal. 28 U.S.C. § 1441(a), (b).

3 **A. Plaintiff is a Citizen of California**

4 11. To establish citizenship for diversity purposes, a natural person must be
5 a citizen of the United States and be domiciled in a particular state. *Bank of N.Y.*
6 *Mellon v. Nersesian*, No. CV13-2604PA(Ex), 2013 WL 8284799, at *3 (C.D. Cal.
7 Apr. 16, 2013) (*citing Kantor v. Wellesley Galleries, Ltd.*, 704 F.2d 1088, 1090 (9th
8 Cir. 1983)). Persons are domiciled in the places they reside with the intent to remain
9 or to which they intend to return. *Id.* Residence is *prima facie* evidence of one's
10 domicile. *Sadeh v. Safeco Ins. Co.*, No. CV12-03117SJO(PLAx), 2012 WL
11 10759737, at *2 (C.D. Cal. June 12, 2012) (*citing State Farm Mut. Auto. Ins. Co. v.*
12 *Dyer*, 19 F.3d 514, 520 (10th Cir. 1994)).

13 12. In her Complaint, Plaintiff states the following: "Plaintiff at all times
14 herein relevant was an individual residing in Los Angeles County, State of
15 California." (Darrow Decl. ¶ 2, Exh. A, Complaint ¶ 5). Plaintiff is, therefore, a
16 citizen of California for purposes of the instant jurisdictional analysis. *See Kanter v.*
17 *Warner-Lambert Co.*, 265 F.3d 853, 857 (9th Cir. 2001).

18 **B. Defendant is not a Citizen of California**

19 13. In determining diversity jurisdiction, a corporation "shall be deemed a
20 citizen of any State by which it has been incorporated and of the State where it has
21 its principal place of business. 28 U.S.C. § 1332(c)(1). As to the latter aspect of the
22 corporate citizenship analysis, the U.S. Supreme Court adopted a single, uniform test
23 to determine a "principal place of business": the "nerve center" test. *See Hertz Corp.*
24 *v. Friend*, 559 U.S. 77, 92-93 (2010). The Court explained, the "nerve center" is
25 normally located where the corporation maintains its corporate headquarters and
26 where the "corporation's officers direct, control, and coordinate the corporation's
27 activities." *Id.* This analysis focuses on the place at which the corporation's executive

1 and administrative functions are conducted. *See Indus. Tectronics, Inc. v. Aero Alloy*,
2 912 F.2d 1090, 1092-93 (9th Cir. 1990).

3 14. At the time of filing, Defendant was (and still is) incorporated in the
4 state of Ohio. (Declaration of Crystal Olivar (“Olivar Decl.”), ¶ 5). Additionally,
5 Defendant’s headquarters, including its executive and administrative officers, are
6 located in Columbus, Ohio, which is where nearly all of the executive and
7 administrative functions are carried out. (*Id.*). Accordingly, Defendant is a citizen of
8 Ohio.

9 **V. THE AMOUNT IN CONTROVERSY EXCEEDS \$75,000**

10 15. The Court has jurisdiction over this case because, in addition to
11 complete diversity between the parties, the amount placed in controversy by
12 Plaintiff’s alleged claims exceeds \$75,000, exclusive of interest and costs. 28 U.S.C.
13 § 1332(a). Therefore, because the amount in controversy exceeds \$75,000, the second
14 requirement of diversity jurisdiction is satisfied.

15 16. Plaintiff’s Complaint does not specify the amount that Plaintiff seeks to
16 recover from Defendant in this action. Where removal is based on diversity of
17 citizenship and the initial pleading seeks a money judgment but does not demand a
18 specific sum, “the notice of removal may assert the amount in controversy,” 28
19 U.S.C. § 1446(c)(2), and a removing defendant “need include only a plausible
20 allegation that the amount in controversy exceeds the jurisdictional threshold.” *Dart*
21 *Cherokee Basin Operating Co. v. Owens*, 135 S. Ct. 547, 554 (2014). Here, the
22 Complaint does not indicate a total amount of damages claimed; consequently,
23 Defendant only needs to show by a preponderance of the evidence (that it is more
24 probable than not) that Plaintiff’s claimed damages exceed the jurisdictional
25 minimum. *Sanchez v. Monumental Life Ins. Co.*, 95 F.3d 856, 862 (9th Cir. 1996).

26 17. In measuring the amount in controversy, this Court must assume that the
27 allegations in the complaint are true and that a jury will return a verdict for the
28

1 plaintiff on all claims asserted. *Kenneth Rothschild Trust v. Morgan Stanley Dean*
2 *Witter*, 199 F. Supp. 2d 993, 1001 (C.D. Cal. 2002). The ultimate inquiry is the
3 amount put “in controversy” by the plaintiff’s complaint, and now how much, if
4 anything, the plaintiff will actually recover. *Rippee v. Boston Market Corp.*, 408 F.
5 Supp. 2d 982, 986 (S.D. Cal. 2005) (citing *Schere v. Equitable Life Assurance Soc’y*
6 *of the United States*, 347 F.3d 394, 399 (2d Cir. 2003) (recognizing that the ultimate
7 or provable amount of damages is not what is considered in the removal analysis;
8 rather, it is the amount put in controversy by the plaintiff’s complaint)). Further, as
9 one district court recently held, “[u]nder this standard, ‘the removing party’s burden
10 is ‘not daunting,’ and defendants are not obligated to ‘research, state, and prove the
11 plaintiff’s claims for damages.’” *Cagle v. C & S Wholesale Grocers, Inc.*, No. 2:13-
12 CV-02134-MCE, 2014 WL 651923, at *7 (E.D. Cal. Feb. 19, 2014) (citations
13 omitted).

14 18. The removal statute requires a defendant seeking to remove a case to
15 federal court to file a notice “containing a short and plain statement of the grounds
16 for removal.” 28 U.S.C. § 1446(a). The Supreme Court in *Dart Cherokee Basin*
17 *Operating Co. v. Owens* recognized that “as specified in § 1446(a), a defendant’s
18 notice of removal need include only a plausible allegation that the amount in
19 controversy exceeds the jurisdictional threshold.” Only if the plaintiff contests or the
20 court questions the allegations of the notice of removal is supporting evidence
21 required. *Dart Cherokee Basin Operating Co., LLC v. Owens*, 574 U.S. 81, 88 (2014).
22 Otherwise, “the defendant’s amount-in-controversy allegation should be accepted”
23 just as a plaintiff’s amount-in-controversy allegation is accepted when a plaintiff
24 invokes federal court jurisdiction. *Id.*

25 19. Plaintiff’s Complaint alleges six causes of action: (1) Wrongful
26 Termination in Violation of Public Policy (Cal. Gov. Code § 12940(a); (2) Disability
27 Discrimination (Cal. Gov. Code § 12940 *et seq.*; (3) Retaliation (Cal. Gov. Code §

1 12940(h); (4) Failure to Take Reasonable Steps to Prevent Discrimination (Cal. Gov.
2 Code § 12940(k); (5) Failure to Provide Reasonable Accommodation (Cal. Gov.
3 Code § 12940(k); and (6) Failure to Engage in the Interactive Process (Cal. Gov.
4 Code § 12940(n). (Darrow Decl. ¶ 2, Exh. A, Complaint). Although Defendant
5 denies the validity and merit of Plaintiff's claims and the underlying allegations, and
6 further denies that Plaintiff is entitled to any relief, Plaintiff's allegations establish an
7 amount in controversy in excess of the jurisdictional minimum of \$75,000, exclusive
8 of interest and costs, as set forth below:

9 **A. Emotional Distress Damages**

10 20. Plaintiff seeks damages for emotional distress. (Darrow Decl., ¶ 2, Exh.
11 A, Complaint ¶¶ 31, 42, 53, 64, 73, 80). Plaintiff's potential recovery of such
12 damages further augments the foregoing amounts and demonstrates that the
13 jurisdictional prerequisite for removal of this action is met. *See Gibson v. Chrysler*
14 *Corp.*, 261 F.3d 927, 945 (9th Cir. 2001) (holding that emotional distress damages
15 are included in determining amount in controversy); *see also Velez v. Roche*, 335 F.
16 Supp. 2d 1022, 1038-40 (N.D. Cal. 2004) (surveying discrimination and harassment
17 cases awarding emotional distress damages and concluding that "substantial jury
18 awards of hundreds of thousands of dollars for non-economic damages have been
19 upheld where there is evidence . . . that the plaintiff suffered heightened mental
20 anguish").

21 21. Although Defendant disputes that Plaintiff is entitled to any such award,
22 plaintiffs in employment cases have been awarded substantial sums for emotional
23 distress. *See, e.g., Gardenhire v. Hous. Auth. of Los Angeles*, 85 Cal. App. 4th 236,
24 240-241 (2002) (affirming judgment, including jury award of \$1.3 million in
25 emotional distress damages for wrongful termination in violation of public policy
26 claim); *Swinton v. Potomac Corp.*, 270 F.3d 794 (9th Cir. 2001) (award of \$30,000);
27 *Coleman v. Assurant, Inc.*, 463 F. Supp. 2d 1164, 1168 (D. Nev. 2006) (emphasizing,

1 “[i]t is well established that punitive damages are part of the amount in controversy
2 in a civil action.”) (citing *Gibson*, 261 F.3d at 945); *Richmond v. All State Ins.*, 897
3 F. Supp. 447, 449-50 (S.D. Cal. 1995) (concluding that general and special damages
4 are included in the amount in controversy).

5 22. For example, *Nimmo v. Montage Hotels & Resorts, LLC*, No. 30-2009-
6 00117583-CU-WT-CJC, 2012 Jury Verdicts LEXIS 2353 (Cal. Super. Ct. Feb. 16,
7 2012), was a disability discrimination case with allegations similar to those here. In
8 *Nimmo*, the plaintiff-employee returned to work from medical leave related to knee
9 and foot surgery. Shortly after returning from leave, the employee sought a further
10 leave of absence as an accommodation. *See id.* The employer in *Nimmo* claimed that
11 the plaintiff had no disability that required special accommodations and separated his
12 employment. *See id.* Ultimately, the jury found the employer liable and awarded
13 \$275,000 in emotional distress damages along with \$100,440 in economic damages.
14 *See id.* In *Martin v. Arrow Elecs.*, No. SAV041134JVS, 2006 WL 2044626 (C.D.
15 Cal. June 12, 2006), the plaintiff was awarded over one million dollars (including
16 \$300,000 for claimed pain and suffering) for allegations of, among others, disability
17 discrimination and wrongful termination. Likewise, in *Snider v. Laquer*, BC329157,
18 2006 WL 4050121 (Cal. 2006), the plaintiff was awarded over \$1,000,000 for pain
19 and suffering based in part on disability discrimination.

20 23. Here, the issues of accommodation and lawfulness of Plaintiff’s
21 termination are similar to those at issue in the cases discussed above. Considering
22 that Plaintiff seeks various types of damages, the amount of damages claimed by
23 Plaintiff clearly meets the minimum amount in controversy.

24 **B. Lost Wages**

25 24. Plaintiff also seeks lost wages. (Darrow Decl., ¶ 2, Exh. A, Complaint
26 ¶ 81). Should Plaintiff prevail on her wrongful termination and/or discrimination
27 claims, she potentially could recover lost wages and benefits through the date of trial.

1 Cal. Lab. Code § 6310(b). *See* Judicial Council of California, Civil Jury Instructions
2 (“CACI”) No. 2433 (2018); *Wise v. S. Pac. Co.*, 1 Cal. 3d 600, 607 (1970).

3 25. At the time Plaintiff’s employment ended on or about December 31,
4 2022, she earned \$21.00 per hour. At the end of December 2021, the last full year of
5 continued employment, Plaintiff’s rate of pay was \$18.85, and her year-to-date gross
6 earnings were \$38,192.71 (or approximately \$3,182.73 per month). (Olivar Decl. ¶
7 4). If Plaintiff were to recover back wages from December 31, 2022, to present, she
8 could potentially recover \$9,548.19 (3 months x \$3,182.73). Moreover, if the case
9 proceeds to trial by the end of March 2024—approximately one year from when
10 Plaintiff served Defendant with the Complaint—and Plaintiff remains unemployed,
11 the amount in controversy on lost wages would be a total of approximately 12
12 months, or roughly \$38,192.76.

13 26. In addition, front pay awards in California frequently span a number of
14 years. *See Rabaga-Alvarez v. Dart Indus., Inc.*, 55 Cal. App. 3d 91, 97 (1976) (four
15 years); *Drzewiecki v. H&R Block, Inc.*, 24 Cal. App. 3d 695, 705 (1972) (ten years).
16 Even conservatively estimating that Plaintiff seeks front pay benefits for only the
17 three years after trial, the amount of future wages in controversy in this case would
18 total at least an additional \$114,578.28 (36 months x \$3,182.73). Thus, if this case
19 goes to trial in March 2024, it may reasonably be estimated that Plaintiff’s claims of
20 back pay and front pay would alone total an estimated \$124,126.47.

21 **C. Punitive Damages**

22 27. Plaintiff also seeks punitive damages. (Darrow Decl., ¶ 2, Exh. A,
23 Prayer for Relief ¶ 6). “It is well established that punitive damages are part of the
24 amount in controversy in a civil action.” *Gibson v. Chrysler Corp.*, 261 F.3d 927,
25 945 (9th Cir. 2001).

26 28. A defendant may use damage awards in other cases to establish the
27 amount in controversy. *Simmons v. PCR Tech.*, 209 F. Supp. 2d 1029, 1033 (N.D.

1 Cal. 2002). California law provides no specific monetary limit on the amount of
2 punitive damages that may be awarded under Civil Code section 3294. *Boyle v.*
3 *Lorimar Productions, Inc.*, 13 F.3d 1357, 1360 (9th Cir. 1994). Additionally,
4 employment discrimination cases have the potential for large punitive damages
5 awards. *Simmons*, 209 F. Supp. 2d at 1033. Indeed, punitive damage awards have
6 equaled as much as four times the amount of the actual damages award. *State Farm*
7 *Mutual Auto Ins. Co. v. Campbell*, 538 U.S. 408, 425 (2003). In *Aucina v. Amoco*
8 *Oil, Co.*, 871 F. Supp. 332 (S.D. Iowa 1994), the defendant employer established that
9 the amount in controversy exceeded the jurisdictional minimum in a discrimination
10 and wrongful discharge lawsuit where the former employee asserted claims for lost
11 wages, lost benefits, mental anguish, and punitive damages. The court noted that
12 “[b]ecause the purpose of punitive damages is to capture a defendant’s attention and
13 deter others from similar conduct,” the plaintiff’s claim for punitive damages “might
14 alone” exceed the jurisdictional minimum. *Id.* at 334; *see also, Simmons*, 209 F.
15 Supp. 2d at 1033 (citing employment discrimination cases involving punitive
16 damages awards). Accordingly, Plaintiff’s claim for punitive damages alone places
17 at least \$75,000 in controversy.

18 **D. Attorneys’ Fees**

19 29. Plaintiff also seeks attorneys’ fees. (Darrow Decl., ¶ 2, Exh. A, Prayer
20 for Relief ¶ 5). Attorneys’ fees potentially recoverable by statute are also included in
21 determining the amount in controversy. *Galt G/S v. JSS Scandinavia*, 142 F.3d 1150,
22 1155-56 (9th Cir. 1998). In actions brought under the FEHA and CFRA, the court,
23 in its discretion, may award to the prevailing party reasonable attorneys’ fees. Cal.
24 Gov’t Code § 12965(b).

25 30. Any estimate of attorneys’ fees includes fees over the life of the case,
26 not just the fees incurred at the time of removal. *Sasso v. Noble Utah Long Beach,*
27 *LLC*, Case No.: CV 14-09154-AB (AJWx), at *7 (C.D. Cal. Mar. 3, 2015). “Recent

1 estimates for the number of hours expended through trial for employment cases in
2 [the Central District of California] have ranged from 100 to 300 hours. Therefore,
3 100 hours is an appropriate and conservative estimate. Accordingly, attorneys' fees
4 in [an employment discrimination case alleging wrongful termination] may
5 **reasonably be expected to equal at least \$30,000** (100 hours x \$300 per hour)." *Id.*
6 (emphasis added). Thus, Plaintiff's demand for attorneys' fees adds at least \$30,000
7 to the amount in controversy, which is an extremely conservative estimate. *See e.g.*,
8 *Flannery v. Prentice*, 26 Cal. 4th 572 (2001) (upholding an award of attorneys' fees
9 under the FEHA for \$971,684); *Dwyer v. Crocker Nat'l Bank*, 194 Cal. App. 3d 1418
10 (1987) (upholding award of \$75,258 in attorneys' fees under the FEHA); *Zissu v.*
11 *Bear, Stearns & Co.*, 805 F.2d 75 (1986) (upholding \$550,000 in attorneys' fees
12 awarded under the FEHA); *Begazo v. Passages Silver Strand L.L.C.*, JVR No.
13 1706020057 (Cal. Super. 2017) (court awarding \$375,568 in attorneys' fees in FEHA
14 action).

15 31. To date, Plaintiff has certainly incurred fees and costs in preparing and
16 filing her Complaint. In fact, at an assumed rate of \$300 per hour, Plaintiff's counsel
17 would need to spend only 250 hours of attorney time (a very conservative estimate
18 of time spent through trial) to incur \$75,000 in reasonable attorneys' fees (250 x \$300
19 = \$75,000).

20 32. Although Defendant does not concede Plaintiff's claims have any merit,
21 when the relief sought by Plaintiff is taken as a whole, the amount in controversy for
22 Plaintiff's claims significantly exceeds the \$75,000 jurisdictional threshold. Thus,
23 this Court has original jurisdiction over the claims asserted by Plaintiff in this action
24 based on diversity of citizenship jurisdiction under 28 U.S.C. §§ 1332(a)(1) and
25 1441.).

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27 ///

28

1 **VI. NOTICE TO THE COURT AND PARTIES**

2 Contemporaneously with the filing of this notice of removal in the United
3 States District Court for the Central District of California, Southern Division,
4 written notice of such filing will be given by the undersigned to Plaintiff's counsel
5 of record and a copy of the notice of removal will be filed with the clerk of the
6 court for the Superior Court of the County of Orange.

7 **VII. CONCLUSION**

8 WHEREFORE, having fulfilled all statutory requirements, Defendant
9 removes this action from the Superior Court of the State of California for the
10 County of Orange, to this Court, and requests this Court assume full jurisdiction
11 over this matter as provided by law.

12 Dated: April 14, 2023

13 LITTLER MENDELSON P.C.

15 /s/ Chase Parongao

16 Tanja L. Darrow
17 Chase Parongao

18 Attorneys for Defendant
19 NATIONWIDE MUTUAL
20 INSURANCE CO.

21 4893-8225-4941.1 / 111742-1030